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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/033,775

01/03/2002

Bruce Elliot Kramer

TREADMILL1

8566

7590 05/07/2010
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EXAMINER

CROW, STEPHEN R

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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05/07/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/033,775	Applicant(s) KRAMER ET AL	
	Examiner Steve R. Crow	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 1-19-10.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1,5-7,10-13,17-19 and 22-26 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1,5-7,10-13,17-19,22-26 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 6-7,10-12,17-19,22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
2. The pair of endless belts; the separate belt inclinations; the independently driven belts; the separate pivoting handlebar, and other structure claimed are not described and shown, as originally filed, by the Disclosure.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Moon et al.

The Moon treadmill is capable of receiving two adults in various relative orientations. The claim limitation "side-by-side" can include: one user ahead of the other user; the two users facing orthogonal to the belt's direction of travel; two users facing forward and fitted between the handrails when the belt is stationary.

- Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelsey et al.

The Kelsey et al treadmill is capable of receiving two adults in various relative orientations. The claim limitation "side-by-side" can include: one user ahead of the other user; the two users facing orthogonal to the belt's direction of travel; two users facing forward and fitted between the handrails when the belt is stationary.

1. Claims 7,10,11,19,22,23 are rejected under 35 U.S.C. 102(b) as being anticipated by Piaget et al.

Piaget et al discloses a treadmill a base, two pairs of parallel, spaced rollers rotatably disposed in the base, and two endless belts, wherein one belt extends around both rollers in one pair of rollers and the other belt extends around both

rollers in the other pair of rollers, wherein each belt has a width which is large enough to accommodate one treadmill user, and wherein the two belts are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person; and wherein the belts are inclinable.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,5 and 13,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen.

Moon et al discloses all of applicant's claimed invention except for the specific widths claimed.

Derksen teaches the well recognized use of treadmills for training horses as shown in figure 3. In view of this well recognized treadmill use, it would have been obvious to one skilled in the art to enlarge the Moon et al treadmill to any desirable width such as 45 inches wide for accommodating any desired animal for exercise purposes.

The examiner notes that this is a matter of design choice and is a matter of size or degree, as modifications that would have been obvious to an artisan of ordinary skill in light of the teachings of the prior art.

An enlarged treadmill width of 45 inches would be desired to accommodate extremely large persons or animals and is considered a design choice which carries no patentable weight. As to the method claims 13-18, such a sized treadmill could be used for any desired function , such as accommodating plural animals.

4. Claims 1,5 and 13,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al.

5. Kelsey discloses a treadmill as depicted in Figure 2 having an adult male supported thereupon.

The examiner contends that the Kelsey et al treadmill width, when viewed with respect to the relative dimensions of the user and the treadmill , as shown in figure 2, appears approximately about 40-45 inches wide. An athletic adult male has a shoulder width range of from about 25 to 30 inches. The Kelsey figure 2 depiction clearly shows a treadmill width of the order of 2 ½ to three times the width of a user. Figure 2 is prior art. Figure 2 is considered an accurate representation of the proportionality of the treadmill with respect to a user. It is proper to approximate the width of the treadmill given the proportional dimensions provided in figure 2.

If not possessing precise dimensions, the examiner notes that providing a belt width of at least 45 inches is a matter of design choice and is a matter of size or

degree, as modifications that would have been obvious to an artisan of ordinary skill. Furthermore, in view of KSR, it would have been obvious to one skilled in the art to try or experiment with various belt widths to accommodate different sized users; e.g., tailor the belt width according to the dimensions of the desired user, such as morbidly obese people who require larger accommodations.

2. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Nichols.

Nichols discloses the use of a handle 100 pivotally connected to the handle 15 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al or Kelsey et al treadmills either by clamping the handle 100 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

3. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al or Kelsey et al treadmills either by clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

4. Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piaget et al in view of Gerard.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Piaget et al treadmill either by clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

5. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen as applied to claims 5 and 17 above, and further in view of Gerard or Nichols.

Nichols discloses the use of a handle 100 pivotally connected to the handle 15 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al treadmills either by clamping the handle 100 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

6. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al treadmills either by

clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

6. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al as applied to claims 5 and 17 above, and further in view of Gerard or Nichols.

Nichols discloses the use of a handle 100 pivotally connected to the handle 15 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Kelsey et al treadmills either by clamping the handle 100 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Kelsey et al treadmills either by clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

Response to Arguments

7. Applicant's arguments filed 1-19-10 have been fully considered but they are not persuasive.

8. Applicant argues that "contrary to the Examiner's position, the pair of endless belts, the separate belt inclinations, the independently driven belts, the separate pivoting handlebar, and other structure recited in the claims are described and shown in

the specification at, e.g., in the description from page 5, line 13 to page 6, line 16 and in the description in the last paragraph on page 7 in the application.”

As originally filed , the above mentioned structures are not shown by the drawings.

Applicant argues that other patents are shown such as Fig. 2 in U.S. Patent 5,607,376 and Fig. 1 in U.S. Patent 4,204,673 evidence of the knowledge in the art with respect to dual-type treadmills.

Please note that these cited tradmills references are not present in the Disclosure and do not have the same arrangements as applicant's claims.

Applicant argues that the above mentioned elements which are claimed, are supported by the disclosure at page 7, lines 4-19 in the original specification. Applicant then asserts that one skilled in the art could guesstimate, intuit, or discern the particular structure entered as new matter in the Drawings , although as previously stated by the examiner the particular structural characteristics and relative locations are not supported by the original Disclosure.

Again, Applicant argues that art which has not been cited in the application can be used to overcome new matter concerns. As stated above by the examiner, the particular structural characteristics and relative locations are not supported by the original Disclosure. Furthermore, the alluded to art (e.g., Fig. 2 in U.S. Patent 5,607,376 and Fig. 1 in U.S. Patent 4,204,673) is not cited in the Disclosure.

Applicant states "Further, Applicants submit that the description in the last paragraph on page 7 in the specification (including the disclosure that the middle portion can extend back from a middle part of the front portion and that, when not desired, the middle portion either can be pivoted so that it hangs down from the front portion or can be removed) is sufficient to describe the linear, horizontal element of the proposed drawing in addition to how it would be attached to the handle bar 46.

Once again, the Applicant resorts to speculation as to the structural characteristics and locations of the elements. How would the handle be attached to the device? Certainly, it is possible that someone skilled in the art would be able to produce the device as claimed, but that isn't the issue here. The issue is that the what, how, and where characteristics haven't been disclosed as originally filed. It's not permissible to add new matter into an application, especially claim situations in order to overcome the prior art rejections.

The Attorney argues that anticipation requires that the claimed limitation must be expressly stated in the Specification , and that the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.

The examiner contends that under 102 analysis the prior art need not expressly state the claimed limitation. Applicant's claims fail to recite a "precise proportion" and a "particular size" (language gleaned from Applicant's case law citation); rather the claims utilize a very broad dimensional limitation, not a particular size.

Applicant argues "With respect to the Examiner's previous indication that the language "adult people" doesn't recite specific dimensions and that adult humans come in various sizes, such as dwarfs who are abnormally small, Applicants submit that such an interpretation is unreasonable and is not the interpretation that one skilled in the art would give to the terminology at issue."

Applicant appears to want the examiner to narrowly construe the metes and bounds of the claim limitation, yet applicant wants the claims to maintain a very broad and imprecise size limitation

Applicant argues that "For claim 2 to be a proper dependent claim and further limit claim 1, the recitation in claim 2 of two adult people side-by-side would need to result in a belt which is wider than the minimum width belt which could accommodate two treadmill users side-by-side." And the applicant then concludes and opines that the Examiner has not fairly interpreted the claim recitation. This argument cannot be understood.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the side-by-side language intended definition) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

Side-by-side isn't limited to having the user's shoulders coparallel and the users facing in the same direction , and the users further facing in the forward direction. As the

Examiner has contended in the previous Office Action, the two users could be facing orthogonal to the direction of the treadmill.

Additionally, the claims fail to recite transversing the treadmill belt. Two people would require even less treadmill width if they desired to merely stand upon the treadmill belt.

Applicant continues to argue that the claims must be interpreted according to her arguments and not be given their broad reasonable interpretation.

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues, "Thus, the Moon et al treadmill is directed to a user who would be on the treadmill and accessing the control panel.

In contrast, Derksen discloses a treadmill used by a horse.

Since a horse is not a treadmill user that would be accessing a control panel, one of ordinary skill in the art would not have applied the teachings of Derksen to Moon et al.

The examiner has stated that there would be many desired treadmill usages, e.g., for large animals, humans, and horse rehabilitation; not just limited to horse rehabilitations.

Applicant states: --Further, Applicants note that claims 6 and 18 recite that the handle bar has a middle portion which can extend back from a middle part of the front portion of the handle bar. --.

These remarks suggest that the handle bar is of unitary construction, as opposed to the new matter handle which is pivotally attached to the handle bar.

Applicant argues that:

-- Moreover, Applicants note that element 42 of Gerard cited by the Examiner is a ski pole grip (see col. 4, line 5), and thus one of ordinary skill in the art would not have fairly applied it to a treadmill as in Piaget. --

There are common nexis between the Gerard and Moon and Kelsey devices. All have frames, moving treadmill belts, user supports, and are used for exercising humans and animals; therefore the Gerard reference is relevant and is "fairly" applied.

Applicant argues limitations which aren't claimed, e.g., "the middle portion can be grasped by the right hand of the left user and/or by the left hand of the right user of the claimed treadmill", and therefore are not relevant arguments.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3764

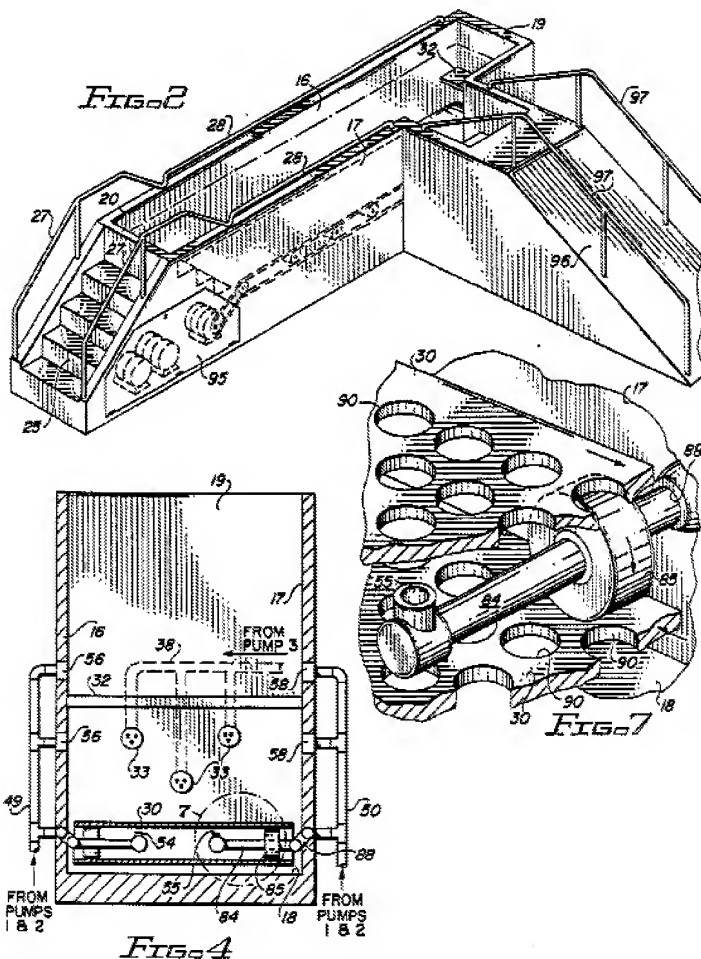
Crandell shows:

U.S. Patent

Jul. 3, 1990

Sheet 2 of 4

4,938,469



Crandell states: (2) Reference now should be made to the drawings in which the same reference numbers are used throughout the different figures to designate the same components. FIGS. 1 and 2 illustrate two variations of a preferred embodiment of the invention. The aquatic exercise and therapeutic apparatus which is disclosed in these figures comprises an elongated, rectangularly shaped water tank or pool 15 which, as illustrated in FIGS. 1 and 2, is approximately 20' long, 5' wide and 5' high, with handrailing, at the highest point on the left-hand end of the tank in FIG. 1 and on both of the entry places in FIG. 2, extending approximately twenty-four inches (24") above the top of the tank.

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Art Unit: 3764

Kelso shows:

United States Patent [19]

Kelso

[11] 4,087,088

[45] May 2, 1978

[54] MOVING ARTIFICIAL SKI SURFACE CONSTRUCTION

[76] Inventor: Kenneth J. Kelso, P.O. Box 37222, Houston, Tex. 77036

[21] Appl. No.: 726,167

[22] Filed: Sep. 24, 1976

[51] Int. Cl.² A63G 21/14

[52] U.S. Cl. 272/56.5 SS; 198/321

[58] Field of Search 272/56.5 SS, 56.5 R, 272/97, 49; 198/541

References Cited

U.S. PATENT DOCUMENTS

3,047,291	7/1963	Hall	272/56.5 R
3,120,383	2/1964	Hall	272/56.5 SS
3,224,763	12/1965	Hall	272/56.5 SS
3,422,732	1/1969	York	272/56.5 SS
3,689,066	9/1973	Hagen	272/69

3,703,284 11/1972 Hagen 272/69

Primary Examiner—Richard C. Pinkham

Assistant Examiner—Arnold W. Kramer

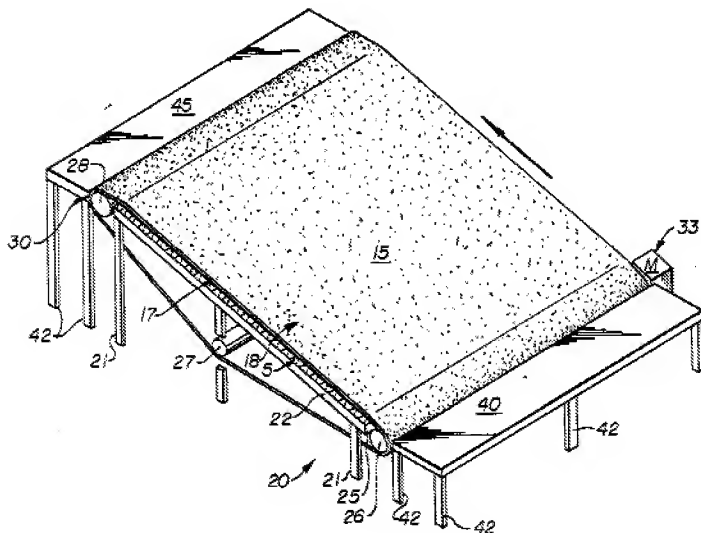
Attorney, Agent, or Firm—Jack W. Hayden

[57]

ABSTRACT

An artificial ski surface construction includes a support surface having an energy absorbing base of elastomer thereon. A flexible sheath covers the energy absorbing base and includes a continuous surface having a fabric underside to contact the sheath with fibers extending upwardly therefrom to provide an artificial ski surface. A structure positions the support surface to form a slope and the continuous surface forms an endless belt which is mounted on rollers with motor means to rotate the rollers and move the continuous surface relative to the sheath and elastomer base.

1 Claim, 2 Drawing Figures



11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 571-272-4973. The examiner can normally be reached on Max Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sc/Steve R Crow/
Primary Examiner, Art Unit 3764